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ABSTRACT

A study examined the effect of attitude toward capital punishment on the evaluation of evidence and the determination of guilt. Subjects were 224 undergraduate students who read a description of a murder. They then received two, four, or six items of evidence relevant to the defendant's guilt. Subjects were asked to determine a verdict and indicate their certainty of that verdict, whether they were for or against capital punishment, and how certain they were of the correctness of that stance. The results supported the hypotheses that (1) persons favoring capital punishment would be significantly more certain of their attitude than those opposed to it, (2) those who found the defendant guilty would be significantly more certain of their verdict than would those who found the defendant not guilty, (3) those who received more evidence of guilt would be significantly more certain of their verdict than those receiving less evidence, and (4) given the same amount of evidence, more people favoring capital punishment would find a guilty verdict than those opposing it. The results did not support the hypothesis that people favoring capital punishment would be more certain of their verdict than would those opposing it. In light of the "death qualified" juries required by some states for capital crimes, it is significant that persons favoring capital punishment are different from those who oppose capital punishment both in the certainty with which they find their verdict and in the amount of evidence they require to find a defendant guilty. (HTH)

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COMMUNICATION, ETHICS AND VALUES:
THE EFFECT OF ATTITUDE TOWARD CAPITAL PUNISHMENT ON THE EVALUATION
OF EVIDENCE AND THE DETERMINATION OF GUILT

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COMMUNICATION, ETHICS AND VALUES:

THE EFFECT OF ATTITUDE TOWARD CAPITAL PUNISHMENT ON THE EVALUATION OF EVIDENCE AND THE DETERMINATION OF GUILT

The controversy over capital punishment continues. In 1972, the U.S. Supreme Court ruled in *Furman vs. Georgia* that the death penalty was inequitably applied. The ruling led to the commutation of the sentences to life in prison for the nation's 631 death row inmates. Since 1972, 36 states have revised their death laws to conform to the Supreme Court ruling. At present, 891 prisoners await their fate on death rows across the nation (Ludden, 1981).

The controversy results in part from the function capital punishment serves in society. Is it a deterrent or retribution? Phillips (1980) reported that capital punishment may provide a deterrent effect on homicide rates in the short term, but no long-range deterrent effect has been documented. Kleck (1979) found no deterrent effect of capital punishment on U.S. homicide rates from 1947 - 1973. He suggested, however, that this may be due to the few executions during the period. The death penalty has been administered only twice in this country since the 1972 Supreme Court decision. In the U.S. the month in which Gary Gilmore was executed in Utah, there was a slight decline in the number of homicides over the same month the previous year (Lester, 1980).

If capital punishment does not deter crime, Americans still increasingly favor it. From 1972 to 1976, the number of Americans favoring capital punishment increased from 50% to 65%. Seventy-three percent of those responding in the present study indicated they favored capital punishment when a person has been convicted of first degree murder.

From a legal and communication perspective two issues require investigation. If a person charged with a capital crime has the right to a trial by a jury of his peers, what effect does the increasing trend toward favoring capital punishment have on jurors, trials and verdicts? For example, except for Maryland, all states where the death penalty is a possible sentence, juries who hear the case must be "death qualified" (White, 1980). This means that potential jurors opposed to capital punishment will be excused for cause. Research suggests this prohibition of jurors who are against the death penalty creates juries that are conviction prone and harsher in their sentences (Bronson, 1970; Jurow, 1971).

Recent evidence demonstrated the relationship between jurors' verdicts and their evaluation of opposing counsel. McLaughlin and others

(1979) found that jurors in acquittal cases gave higher attractiveness ratings to defendants and their attorneys. Jurors who acquitted the defendant also rated the defense attorneys as significantly more credible than the prosecution.

Research by Kiesler (1971) on the impact of commitment also relates to how jurors will process information during a trial. If persons who favor capital punishment are more committed to their belief, this commitment may make them rigid and unresponsive to behavioral alternatives contrary to their initial position.

It can also be argued that the reality of taking a human life in a specific capital offense case may be personally aversive and create dissonance for individuals regardless of their feeling about capital punishment (Cooper, 1971). This potentially dissonant situation could only be reduced by increased certainty in the correctness of the verdict (Cooper and Worchel, 1970).

Existing research showing the conviction proneness of death qualified juries suffers from two important weaknesses. Most of the studies were conducted more than a decade ago before the Supreme Court ruling and the recent executions in Utah and Florida (Oberer, 1961; Bronson, 1970; Jurow, 1971). This research also failed to determine the impact of a crucial variable in any criminal trial, the amount and nature of the evidence against the accused.

The present investigation examined the effect of attitude toward capital punishment on the evaluation of evidence and the determination of guilt. The following hypotheses were tested:

1. Persons in favor of capital punishment will be significantly more certain of their attitude position than will persons opposed to capital punishment.
2. Persons in favor of capital punishment will be significantly more certain of their verdict than will persons opposed to capital punishment.
3. Persons who find a defendant guilty as charged will be significantly more certain of their verdict than will persons who find the defendant not guilty.
4. Persons who receive more evidence of guilt in a case will be significantly more certain of their verdict than will persons who receive less evidence.

5. Given the same amount of evidence, persons in favor of capital punishment will find a defendant guilty as charged more frequently than will persons opposed to capital punishment.

METHOD

Variables

The amount of evidence presented against a defendant in a capital offense case was one of the independent variables employed in the present investigation. Two dependent measures in this study were the certainty of subject attitudes toward capital punishment and toward the guilt of the defendant in the case. The subject's verdict of guilty or not guilty in the case served as both an independent and a dependent variable for separate analyses.

Procedure

The subjects (N=224) in this study were undergraduate students enrolled in speech communication classes at a Florida university. The sample included males and females, majors and non-majors, enrolled in elective and required courses.

All subjects read a general description of a hypothetical breaking and entering case in which a police officer was killed while in the line of duty (Figure 1). They next received either two, four or six items of evidence relevant to the guilt of the defendant in the case (Figure 2).

Based on the available information, subjects were asked to determine if the defendant in the case was guilty or not guilty of homicide. Subjects also indicated on a one hundred point scale how sure they were of their verdict. In addition to general demographic data, subjects indicated whether they were for or against capital punishment when a person has been convicted of first degree murder. Finally, the subjects indicated on a one hundred point scale how sure they were of the correctness of their stand on capital punishment.

RESULTS

The first hypothesis predicted that persons who favor capital punishment will be significantly more certain of their attitude position than will persons opposed to capital punishment. This hypothesis was confirmed ($t=2.11$; $p < .025$; one-tailed test). Those in favor of capital punishment were significantly more certain ($\bar{x}=87.2$) of the correctness of their position than were those opposed to capital punishment ($\bar{x}=79.7$).

A 2x2x3 factorial analysis of variance was employed to test hypotheses 2, 3 and 4. Although two of the three main effect comparisons were significant, none of the two way or the three-way interactions produced significant effects.

The results of the present study did not support the hypothesis (H 2) that persons who favor capital punishment will be significantly more certain of their verdict than will persons opposed to capital punishment ($F=0.04$; $df=1/212$; NSD). Persons who favored capital punishment were only slightly more certain of the correctness of their verdict in the present case ($\bar{x}=66.3$) than were those opposed to capital punishment ($\bar{x}=64.4$).

Hypothesis 3 was strongly supported ($F=23.73$; $df=1/212$; $p < .001$). Those who found the defendant guilty as charged were significantly more certain of their verdict ($\bar{x}=74.8$) than were those who found the defendant not guilty ($\bar{x}=58.9$). It is noteworthy, however, that the not guilty verdict was the majority decision (128 vs 96).

Hypothesis 4 received strong support ($F=4.13$; $df=1/212$; $p < .02$). It is reassuring to know that persons who receive more evidence of guilt in a case will be significantly more certain of their verdict than will persons who receive less evidence. The Student Newman-Keuls multiple range test revealed that those who received six items of evidence were significantly more certain ($\bar{x}=74.7$) than those who received either two ($\bar{x}=60.9$) or four items of evidence ($\bar{x}=62.9$; $p < .05$).

Chi-square analyses of the percent of persons for and against capital punishment who found the defendant guilty in each evidence group were conducted to test the fifth hypothesis. The hypothesis was supported for the groups who received two items of evidence ($X^2=6.34$; $df=1$; $p < .025$) and four items of evidence ($X^2=20.54$; $df=1$; $p < .001$). In the six item evidence group the percentage of those finding the defendant guilty was identical for the group in favor of capital punishment and the group opposed to capital punishment (67%).

DISCUSSION

In the ongoing debate over the function and effectiveness of capital punishment, little attention has been given to the effect of jurors' pre-trial attitudes on their ability to render an objective and rational verdict. In states where capital punishment is permitted, potential jurors must first declare their attitude position toward capital punishment before their acceptability to serve is determined. The present investi-

gation attempted to assess the impact of attitudes toward capital punishment and the amount of evidence presented in a case on the decision making process and the degree of certainty that accompanies the decision.

In a time when many states require that "death qualified" juries must hear capital cases, the results of this study indicate that persons who favor capital punishment are different from those who oppose capital punishment both in the certainty with which they hold their attitude and in the amount of evidence they require to find a defendant guilty of a capital crime. In this study, however, not all persons who favored capital punishment found the defendant guilty as charged. Neither did all who opposed capital punishment find the defendant not guilty. The resulting verdict differences contributed to two interesting findings. Persons who favored capital punishment were not significantly more certain of their verdict in the case than were those opposed to capital punishment. Those who found the defendant guilty as charged, however, held their opinion with more certainty than did those who found the defendant not guilty. It is possible that the aversion to being responsible for taking another human life, regardless of the reason, may create a dissonant state in those who found the defendant guilty. The dissonance could be reduced by a high degree of certainty that the decision was correct.

Another explanation for the difference between the certainty ratings given and those who found the accused not guilty may come from the subtle but important distinction between not guilty and innocent in American criminal jurisprudence. In his book, Till Death Us Do Part (1978), Vincent Bugliosi explained the difference:

"A 'Not Guilty' verdict based on the insufficiency of the evidence can result from one of two states of mind on the part of the jury: that they believe the defendant is innocent and did not commit the crime; or, although they do not believe he is innocent and tend to believe that he did commit the crime, the prosecution's case was not sufficiently strong to convince them of his guilt beyond a reasonable doubt" (pp. 364-365).

The importance of evidence in determining a verdict is obvious. In the present study as the evidence against the accused increased, the percentage of guilty verdicts also increased. Of greater interest, however, was the finding that with little or moderate evidence, those in favor of capital punishment were more likely to find the defendant guilty than were those opposed to capital punishment. When the evidence against the accused was extensive, those opposed to capital punishment respond com-

parably to the pro capital punishment group. This finding suggests that the amount of evidence in a capital case may be sufficient enough to make the verdict of "death-qualified" and non-death qualified juries comparable.

Various alternatives have been suggested to replace "death qualified" juries with jurors who may or may not favor capital punishment. For example, death qualified jurors could be used only in the sentence phase of the trial after the verdict is rendered. Another possibility would be to have only those on the jury who favor capital punishment determine the sentence after the entire jury heard the evidence and reached its decision (Mullin, 1980).

In 1968, the Supreme Court of the United States reviewed a case in which the argument was made that a death-qualified jury is constitutionally biased with respect to the determination of guilt (Witherspoon vs Illinois, 396 U.S. 510). The court decided to affirm the defendant's murder conviction on the basis that the empirical data was "too tentative and fragmentary to establish that jurors not opposed to the death penalty tend to favor the prosecution in the determination of guilt." The court, however, could confirm such an argument if better empirical evidence were established. The research since 1968 investigating the relationship between conviction proneness and death-qualified juries is uniformly consistent. People who favor capital punishment appear to be more likely to convict than those who do not. Yet inherent weaknesses remain in the research conducted to date. Most of the data were collected under simulated conditions far removed from the reality of the courtroom. Students often served as subjects. Stimulus materials have ranged from brief written case descriptions to audiotapes of simulated trials.

No research has incorporated jury deliberation as a variable in the conviction proneness issue.

The present study reported how individuals are affected by their attitudes toward capital punishment and the amount of evidence presented in the case. Other studies have shown that the deliberation process itself is vitally important to how and what consensus is achieved (for example, see: Myers, D. and Lamm, H., 1976; Taylor, Buchanan, Pryor and Strawn, 1981; and Taylor, Buchanan and Strawn, in press). Future investigations can expand our understanding of how groups reach decisions when human life is at stake.

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At 11:23 p.m. on the evening of August 28, 1980, a silent alarm notified police of a break-in at the Ace Hardware Store at 1395 Second Street. Two officers were dispatched to the store. One officer, Richard Gordon, stayed with the vehicle and surveyed the front of the store. The second officer, Patrolman William Thomas, went to the rear of the building. According to Patrolman Gordon, a few minutes later a white male dressed in a white tee shirt and dark trousers ran from the alley between the buildings at 1399 and 1403 Second Street. The officer shouted at the individual to stop but he ran on and turned left on Orange. The officer did not give chase. Instead he quickly went to the rear of the building. He found Patrolman William Thomas unconscious on the ground, a severe head wound above his right ear. Officer Gordon requested an ambulance for Thomas at 11:38 p.m. He also put out an all points bulletin for a white male between the ages of 16 and 25 dressed in a white tee shirt and dark trousers in the vicinity of the Ace Hardware Store.

Officer William Thomas never regained consciousness. He was pronounced dead on arrival at Memorial Hospital at 11:53 p.m. David Stanley, a white male aged 19, was picked up by police at 11:47 p.m. The following day, August 29, he was charged with murder in the first degree for the death of William Thomas. At his trial, the prosecution asked that David Stanley be given the death penalty for the murder to William Thomas.

FIGURE 1

GENERAL DESCRIPTION OF THE EVENTS IN THE CASE: STANLEY vs. STATE

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1. The defendant, David Stanley was arrested three blocks from the crime scene. Arresting officers described Stanley as short of breath and perspiring heavily.
The defense explained that Stanley lived in the area and was out jogging. Family members confirmed that Stanley often jogged at night.
 2. The defendant was wearing a white tee shirt and dark Levi trousers when arrested. Officer Gordon said Stanley was the same height and build as the person he saw run from the alley. However, Gordon could not positively identify Stanley as the person who ran from the alley the evening of August 28.
The defense denied that Stanley was near the Ace Hardware Store on the evening in question.
 3. The defendant admitted being dismissed from his job at the Ace Hardware Store two days before the crime.
The defense explained Stanley lost his job because of excessive absences. This was confirmed by the store owner.
 4. The owner of the Ace Hardware Store, Mr. Joseph Patterson, reported that Stanley was extremely upset at being dismissed and threatened Patterson with the words: "You'll be sorry."
The defense explained that Stanley needed the job to pay for his tuition at vocational school.
 5. A crow bar was found in bushes near where William Thomas was struck. The crow bar, labeled exhibit #1, had hair, skin and blood on it that matched the hair, skin and blood type of Officer Thomas. The crow bar also had finger prints identified as belonging to the defendant, David Stanley.
The defense explained that Stanley often used the crow bar to open packing crates as part of his job at the Ace Hardware Store.
 6. A blood-stained handkerchief was found on the person of the defendant, David Stanley. The blood type was O-positive, the blood type of the defendant and the victim, William Thomas.
The defense explained the blood stains resulted from a fall Stanley incurred while jogging. A physician who examined Stanley the morning of August 29, reported superficial abrasions on the defendant's right and left hands could have resulted from a fall.
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FIGURE 2

EVIDENCE INTRODUCED IN THE CASE: STANLEY vs. STATE